United Nations **AT**

Administrative Tribunal

Distr.
LIMITED

AT/DEC/878
31 July 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 878

Case No. 982: ORFALI

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Ms. Deborah Taylor Ashford, Vice-President; Mr. Chittharanjan Felix Amerasinghe;

Whereas, on 30 June 1997, Mohammed Ramzi Orfali, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application requesting the Tribunal, inter alia:

"a. [To] consider... [the] accident of 1991 service incurred and [to] adopt... [a] percentage of disability as assessed by Specialists concerned;

b. [To] pay... [the] indemnity due as provided in Area Staff Rules plus interest due effective February 1995 at the UN rate of exchange available on separation;

c. [To] pay... counsel... fees and secretarial expenses estimated at US $600."

Whereas the Respondent filed his answer on 16 December 1997;

Whereas the Applicant filed written observations on 12 February 1998;

Whereas, on 19 March 1998, the Respondent submitted an additional statement;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 1 April 1985, on a temporary assistance basis, through 30 May 1985, as a Driver, at the G-4 level. On 11 November 1985, the Applicant was granted a temporary indefinite appointment as an area staff member as a Driver, at the G-5 level, in Damascus, Syrian Arab Republic (SAR). He was separated from service on 18 May 1995, due to health reasons.

In or about March 1991, the Applicant hit his head against the roof of an Agency vehicle while exiting the vehicle. On 21 July 1991, the Applicant underwent a routine eye-sight examination and was found to be fit for duty.

On 31 January 1995, an UNRWA physician determined that the Applicant required eye surgery and could not drive vehicles. On 5 February 1995, the Field Supply and Transport Officer sought an urgent answer from the Chief, Field Health Program, concerning whether or not the Applicant could drive vehicles. The Applicant alleges that, on 6 February 1995, he sent a letter to the Field Health Officer asking that he be examined by a medical board to assess his fitness to continue as a driver. According to the Respondent, he has no record of receiving this letter.

On 20 February 1995, a Medical Board determined that the Applicant was suffering from a vision defect with retinopathy, which rendered him unable to continue in his position as a driver. The Medical Board concluded that he was unfit for further service with the Agency. On 6 March 1995, the Field Personnel Officer, SAR, notified the Applicant of the Medical Board's findings and informed him that his services would be terminated for health reasons under the provisions of area staff rule 109.7. The termination of the Applicant's appointment took effect on 18 May 1995.

On 24 August 1995, the Applicant wrote to the Director of UNRWA Affairs, SAR, alleging that in March 1991, he had suffered an injury attributable to his service with the Agency, as a result of which he had incurred a disability assessed at 70 per cent. He was therefore claiming compensation for this disability. In a reply dated 21 September 1995, the Officer-in-Charge, Personnel Division, SAR, informed the Applicant that "the Agency [was] unable to accede to [his] request as it [was] outdated. "

On 8 October 1995, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 14 April 1997. Its evaluation, judgement and recommendation read, in part, as follows:

"...

(a) The Board resolved to declare the appeal not receivable as the Appellant did not submit a letter requesting review of the decision, instead he appealed to the Joint Appeals Board a few days later.

(b) The Board could not establish why the Appellant waited six months to submit his appeal, moreover he did not submit any request to be returned to his post since his termination, and the Appellant failed to produce any counter productive evidence.

IV. RECOMMENDATION

14. In view of the foregoing and without prejudice to any further oral or written submission to any party, ... the Board unanimously makes its recommendation to uphold the Administration's decision and that the case be dismissed."

On 29 May 1997, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed him as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board noted that you had not sought the review of the decision which you impugned, as required by the Rules, and accordingly declared that your appeal was not receivable by the Board.

I agree with the Board's conclusions. Your appeal is dismissed.

..."

On 30 June 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's case is receivable. The Applicant first wrote to the Field Health Officer on 6 February 1995, seeking an eye examination to determine his fitness for employment. In that memorandum, which the Respondent claims not to have in the Agency's files, the Applicant describes a service-incurred injury in 1991 that had caused him to have reduced vision. On 24 August, he repeated these claims. The Applicant's delay in submitting his letter of objection was due to uncertainty about what to do and to a lack of competent advisors. Thus the time limit should be waived.

2. The Applicant is eligible for compensation because his injury was attributable to service. He was not aware that the accident caused his eye problems until his physician found that his cataracts were probably caused by "traumas on the head". The Respondent proffered an incorrect translation of his physician's medical assessment, which, when properly translated, demonstrates that the Applicant's injury is related to the trauma.

3. The JAB did not understand the Applicant's case. Their findings appear to complain of the Applicant's lack of a request to return him to his post, when that is not what the Applicant sought by his appeal.

4. The signatures on the JAB report do not correspond to the names of the JAB members.

Whereas the Respondent's principal contentions are:

1. The application is not receivable by the Tribunal. The Applicant never sought review of the contested decision before appealing to the JAB. The Applicant pointed to no circumstances before the JAB to excuse his non-compliance with the Area Staff Rules.

2. The Applicant cannot make a claim for compensation for alleged service-incurred injury. The Agency did not determine that the Applicant's illness was attributable to the performance of official duties when it determined that he was unfit for service and should be paid a disability benefit. Even assuming arguendo that the Applicant's reduced vision was service-related, the Applicant did not comply with the Agency rules to seek compensation therefor. The Applicant failed to act in a timely manner, having waited four years before reporting the accident and making any claim.

3. The Applicant has failed to prove any causal connection between the accident and his illness. He presented contradictory evidence regarding the onset of his illness.

4. The composition of the JAB had to be changed due to problems of availability and travel and visa arrangements. The Applicant fails to articulate any objection to the actual composition of the JAB.

The Tribunal, having deliberated from 1 to 31 July 1998, now pronounces the following judgement:

I. This appeal arises from the Applicant's request for compensation under area staff rule 106.4 for an injury incurred while in the service of the Agency. The Applicant, a driver for the Agency, hit his head while alighting from an Agency vehicle in March 1991. The Applicant alleges that six months after this incident, the Applicant's eye sight began to deteriorate. The Applicant claims that despite undergoing cataract surgery in 1991 and 1993, the Applicant's visual acuity continued to decline. After his termination for health reasons

under area staff rule 109.7, effective 18 May 1995, the Applicant wrote to the Agency on 24 August 1995, seeking compensation for the injury, as attributable to his service. The Officer-in-Charge of the Personnel Division in Syria advised the Applicant by letter dated 21 September 1995, that the request for compensation of the alleged service-incurred injury was time-barred. On 8 October 1995, the Applicant appealed the denial of compensation to the Joint Appeals Board (JAB). The JAB found that the case was not receivable because the Applicant had failed to adhere to the requirements of area staff rule 111.3.

II. According to area staff rule 111.3, before a staff member may appeal to the JAB, the staff member "shall as a first step, address a letter to the Agency's administration requesting that the administrative decision concerned, or the disciplinary action, be reviewed, and setting out his/her reasons for this request." After the denial by the Officer-in-Charge of Personnel Division, of his request for compensation for a service incurred injury, the Applicant, however, appealed directly to the JAB. The requirement in area staff rule 111.3 is not a mere formality, but is the vehicle which provides the Agency an important opportunity to review possibly erroneous administrative decisions.

III. The JAB has no discretion in hearing disputes that are not first addressed to the Agency's administration. Unlike the JAB's ability to waive time-limit restrictions in exceptional circumstances under area staff rule 111.3, paragraph 4, the JAB does not have the power to waive non-compliance with the requirement of requesting administrative review. Therefore, the JAB was correct in dismissing the Applicant's claim as non-receivable.

IV. The Applicant contends that he sent a letter on 6 February 1995, alerting the Agency to his claim for compensation and that he never received a reply. The Applicant argues that his second letter of 24 August 1995, serves as the necessary appeal seeking administrative review of an unfavourable decision. The Respondent claims to have no record of a 6

February 1995 letter from the Applicant and disputes that the letter was ever sent.

Even assuming *arguendo* that there was a letter sent in February 1995, and that the August letter constituted the appeal of an administrative decision, the Applicant's case still was not receivable by the JAB. Paragraph 2 of area staff rule 111.3 sets out the time limits for appeals of administrative decisions by staff members. The rule states that letters of appeal "shall be sent within thirty days from the date on which the staff member receives written notification of the decision in question." The "decision in question" is the decision to terminate the Applicant's appointment on the terms conveyed in a letter dated 6 March 1995. The Applicant claims that in the letter allegedly sent on 6 February 1995, he had asked for compensation because his injury was attributable to service. The letter of 6 March 1995, informing the Applicant that his appointment would be terminated for health reasons under area staff rule 109.7, on the ground that he was "unfit for further service with the Agency", without referring to any compensation for an injury attributable to service, can only be construed to be a final decision on that issue. The Applicant was separated from the Agency at the close of business on 18 May 1995. Still, he waited until 24 August 1995, nearly six months after being notified of his termination on 6 March 1995, to appeal the Agency's decision to terminate his appointment without compensation for a service-incurred injury. This appeal was well beyond the prescribed thirty-day time limit established in area staff rule 111.3.

V. The Tribunal notes that the JAB has the discretion to waive the time limit established in area staff rule 111.3 in exceptional circumstances. However, the JAB "could not establish why the Appellant waited six months to submit his appeal." The Applicant asserts that given the needs of his family and his deteriorating vision, the JAB erred in not finding exceptional circumstances that would permit waiving the time limit. Although the Tribunal is sympathetic to the Applicant's situation, his circumstances do not justify waiving the time limitation. The Applicant did not inform the Administration of his alleged injury at the time it

occurred. Within six months of the injury, the Applicant was consulting medical specialists, but did not report the injury to the Agency. The Applicant argues that he did not fully know the cause of the visual deterioration until August 1995, when his physician made that determination. The Applicant underwent two eye operations in 1991 and 1993, with the same physician who determined in 1995 that a head injury could be the cause of his deteriorating vision. That the potential cause of his injury should not have been discovered until four years and two surgeries later, while under the treatment of the same physician, does not create the exceptional circumstances contemplated by the staff rule. Accordingly, the Tribunal finds that the appeal is time-barred.

VI. For all the reasons stated above, the Tribunal rejects the application.

(Signatures)

Hubert THIERRY
President

Deborah Taylor ASHFORD
Vice-President

Chittharanjan Felix AMERASINGHE
Member

Geneva, 31 July 1998

R. Maria VICIEN MILBURN
Executive Secretary